Served January 22, 1997



UNITED STATES OF AMERICA DEPARTMENT OF TRANSPORTATION OFFICE OF THE SECRETARY WASHINGTON, D.C.

Issued by the Department of Transportation on the 15th day of January, 1997

Applications of

ALASKA AIRLINES, INC.

EMERY WORLDWIDE AIRLINES, INC.

FEDERAL EXPRESS CORPORATION

GEMINI AIR CARGO, LLC

HORIZON AIR INDUSTRIES, INC. d/b/a HORIZON AIR

NORTHWEST AIRLINES, INC.

TOWER AIR, INC.

UNITED AIR LINES, INC.

for exemptions or authorities under 49 U.S.C. section 40109 and the orders and regulations of the Department of Transportation

Dockets OST-96-1951

OST-96-1991

OST-96-1158(48663/48001/49552/49797) OST-96-1668 OST-96-1918

OST-96-1992 OST-96-1993

OST-96-1414 (49361)

OST-96-1934

Undocketed

OST-96-1915(49760)

ORDER

The captioned U.S. air carriers have applied for various forms of authority or relief from Title 49 of the U.S. Code or regulations or orders of the Department in order to perform the air transportation activities shown in the attached Notices of Action Taken.

Except as noted, no answers were filed to these requests. Because of the imminence of these operations, we approved them by telephone, subject to adherence, by each applicant, to the conditions set forth in its certificate(s) of public convenience and necessity, and/or conditions attached.

We carefully considered the information set forth in each application described in the attached Notices of Action Taken, and we found that each of the proposed operations was consistent with the public interest and was consistent with an applicable bilateral aviation agreement and/or the aviation relationship between the United States and the foreign country involved, that each applicant was qualified to perform its proposed operations, and that each application should be approved.

Under authority assigned by the Department in its Regulations, 14 CFR Part 385, we found that for each operation (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption or authority was consistent with the public interest; and (3) grant of this authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.¹

ACCORDINGLY,

- 1. We confirm the actions described in the attached Notices of Action Taken, which granted the referenced U.S. air carriers (1) exemptions from the provisions of Section 41101 and where necessary 41504 or as noted in the attached notices, other sections of Title 49 U.S.C.; or (2) relief or authorizations as provided for under regulations or orders of the Department, to the applicants to perform the operations described in the attached Notices of Action Taken:
- 2. In the conduct of the service, each applicant was to adhere to the conditions set forth in the Appendix, and to any other conditions as noted in the attached Notices of Action Taken;

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¹ On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we found that each U.S. air carrier applicant for an operating exemption is qualified to provide the services authorized.

3. To the extent not granted, or explicitly deferred as noted in the attached Notices of Action Taken, these applications are denied; and	

4. We may amend, modify, or revoke this order at any time without hearing.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions within ten (10) days after the date of service of this order. The filing of a petition for review of a particular action shall affect this order only as it concerns that action.

These actions were effective when taken, and the filing of a petition for review will not alter their effectiveness.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

Appendix

<u>U.S. Carrier</u> <u>Standard Exemption Conditions</u> In the conduct of the operations authorized by the attached order, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with the requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted or confirmed by the attached order shall be effective only during the period when the holder is in compliance with the conditions imposed above.

NOTICE OF ACTION TAKEN

December 24, 1996

	December 24, 1990
This serves as interim notice to the public of the action Department official indicated; the confirming order or as possible.	
Application of Alaska Airlines, Inc. filed	11/15/96 in Docket OST-96-1951 for:
XX Exemption for two years under 49 U.S.C. 40109 t	to provide the following service:
Scheduled foreign air transportation of persons, pro and Yuzhno-Sakhalinsk, Russia.	operty, and mail between Anchorage, Alaska,
Applicant rep.: Marshall S. Sinick, 202-626-6651	DOT analyst: Sylvia Moore, 202-366-6519
DISPOSIT	TION
XX Granted	
The above action was effective when taken:	er 24, 1996, through December 24, 1998
XX Under assigned authority (14 CFR 385) by:	Paul L. Gretch, Director Office of International Aviation (Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.)
XX Authority granted is consistent with the aviation	n agreement between the United States and

Russia.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

 $\frac{XX}{XX} \ \ Holder's \ certificate \ of public \ convenience \ and \ necessity \\ \underline{XX} \ \ Standard \ Exemption \ Conditions \ (attached)$

NOTICE OF ACTION TAKEN

December 5, 1996	
This serves as interim notice to the public of the action	described below taken orally by the
Department official indicated; the confirming order or as possible.	· · · · · · · · · · · · · · · · · · ·
Application of EMERY WORLDWIDE AIRLINES 1991 for:	5, INC. filed 11/27/96 in Docket OST-96-
XX Exemption for two years under 49 U.S.C. 40109 to f property and mail between Laredo, Texas, and Mon services as soon as possible and requested expedited as	terrey, Mexico. Emery proposed to begin
Applicant rep: Lorraine B. Halloway (202) 624-2500 2336	DOT Analyst: Linda Lundell (202) 366-
DISPOSI	TION
XX Granted (Subject to Conditions, See Remarks)	
The above action was effective when taken: Decemb or until 90 days after final Department action on a corroccurs earlier.	
XX Under assigned authority (14 CFR 385) by:	Paul L. Gretch, Director Office of International Aviation (Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.)

 \underline{XX} Authority granted is consistent with the aviation agreement between the United States and Mexico.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

Conditions/Remarks: The authority granted is subject to the dormancy notice conditions as set forth in Condition #7 of Appendix A of Order 88-10-2.

We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served with the application.

NOTICE OF ACTION TAKEN

March 22, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of <u>Federal Express Corporation</u> *filed* <u>3/15/96</u> *in Docket* <u>OST-96-1158 (48663, 48001, 49552, 49797)</u> *for:*

XX Waiver of 14 CFR 377.10(c)

XX Exemption for two years under 49 U.S.C. section 40109 to provide the following service:

Scheduled foreign air transportation of property and mail (1) beyond Beijing to all points in the People's Republic of China open to scheduled international operations in conjunction with its New York-Beijing operations authorized on its certificate for Route 638, and to return from such points to New York either directly or via Beijing; (2) between Los Angeles, California, and Beijing/Shanghai as an additional U.S.-China route, and (3) between the coterminal points Chicago, Illinois; Columbus, Ohio; Los Angeles, California; San Francisco, California; Seattle, Washington; Anchorage and Fairbanks, Alaska; and New York, New York; and the coterminal points Guangzhou and Shanghai, China, and to integrate this authority with its other existing U.S.-China certificate and exemption authority. In addition, Federal Express seeks authority to add Chicago, Illinois; Columbus, Ohio; Los Angeles, California; San Francisco, California; and Anchorage, Alaska as intermediate points to its existing New York-Beijing and beyond route authority.

Applicant rep: Nathaniel P. Breed, 202-663-8078 DOT analyst: Teresa Bingham, 202-366-2390

DISPOSITION

XX *Granted Exemption (See Below)*

XX Dismissed Waiver Request

The above action was effective when taken: March 20, 1996, through March 20, 1998

XX *Under assigned authority (14 CFR 385) by:*

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed
from now until 10 days after the
confirming order/letter issues.
Filing of a petition shall not stay the
effectiveness of this action.)

 \underline{XX} Authority granted is consistent with the aviation agreement between the United States and the People's Republic of China.

(See Reverse Side)

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

Remarks: By Order 95-8-9, the Department approved the transfer to Federal Express of Evergreen's certificate and exemption authority for U.S.-China services. Order 95-8-9 issued authority to Federal Express through January 11, 1997, the existing expiration of Evergreen's certificate. The exemption authorities were transferred for the balance of their existing term (March 22, 1996).

We dismissed Federal Express' request for a waiver from the advance filing requirements of 14 CFR 377 as moot. The renewal application was acted upon before Federal Express's authority expired (March 22, 1996).

We acted on this application without awaiting the expiration of the 15-day answer period with the consent of all parties served.

NOTICE OF ACTION TAKEN

December 24, 1996 This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible. Application of Federal Express Corporation filed 9/10/96 in Docket OST-96-1688 for: **XX** Renew for two years exemption under 49 U.S.C. 40109 to provide the following service: Scheduled foreign air transportation of property and mail between a point or points in the United States and Auckland, New Zealand, including the authority to serve Auckland as an intermediate point on its United States-Australia service. Applicant rep.: Nathaniel Breed, 202-663-8078 DOT analyst: Sylvia Moore, 202-366-6519 DISPOSITION XX Granted The above action was effective when taken: December 24, 1996, through December 24, 1998, or until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier. **XX** Under assigned authority (14 CFR 385) by: Paul L. Gretch, Director Office of International Aviation (Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.)

 \underline{XX} Authority granted is consistent with the aviation agreements between the United States and New Zealand, and the United States and Australia.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

Remarks: The authority being renewed here had been kept in force beyond its prescribed expiration date (November 30, 1996), pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C.

558(c), as implemented by 14 CFR Part 377, pending action on Federal Express' timely filed renewal application.

NOTICE OF ACTION TAKEN

December 24, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible. Application of Federal Express Corporation filed 10/31/96 in Docket OST-96-1918 for: XX Renew for two years allocation of 4 weekly frequencies to provide scheduled all-cargo service in the U.S.-China market. Applicant rep.: Nathaniel Breed, 202-663-8078 DOT analyst: Sylvia Moore, 202-366-6519 DISPOSITION **XX** Granted (Subject to conditions, see below) The above action was effective when taken: December 24, 1996, through December 24, 1998 **XX** Under assigned authority (14 CFR 385) by: Paul L. Gretch, Director Office of International Aviation (Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.) XX Authority granted is consistent with the aviation agreement between the United States and China. Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX Holder's certificate of public convenience and necessity XX Standard Exemption Conditions (attached)

Conditions: Consistent with our standard practice, the frequency allocation granted is subject to the condition that it will expire automatically and the frequencies will revert back to the Department for reallocation if they are not used for a period of 90 days. Federal Express currently operates two all-cargo flights a week. It intends to expand to four weekly flights on April 7, 1997. The 90-day dormancy period for these two frequencies will begin April 7, 1997.

NEW NOTICE OF ACTION TAKEN

December 19, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible. Application of Gemini Air Cargo, LLC filed 11/27/96 in Docket OST-96-1992 for: **XX** Exemption under 49 U.S.C. 40109 to provide the following service: Scheduled foreign air transportation of property and mail between New York, NY; Columbus, OH; Chicago, IL; and San Francisco and Los Angeles, CA; on the one hand, and Hong Kong, on the other. Gemini also seeks to integrate this authority with its U.S.-Taiwan exemption authority. Applicant rep.: Moffett B. Roller, 202-822-9070 DOT analyst: Sylvia Moore, 202-366-6519 DISPOSITION XX Granted The above action was effective when taken: <u>December 17, 1996</u>, through <u>December 17</u>, <u> 1997</u> **XX** *Under assigned authority (14 CFR 385) by:* Paul L. Gretch, Director Office of International Aviation (Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.)

 \underline{XX} Authority granted is consistent with the aviation agreement between the United States and Hong Kong.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity XX Standard Exemption Conditions (attached)

The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award on the route integration authority requested should be construed as conferring upon Gemini additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Gemini notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedure to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in Gemini's authority by virtue of the route integration exemption granted here, but that are not then being used by Gemini, the holding of such authority by route integration will not be considered as

viding any preference for Gemini in a competitive carrier selection proceeding to determine which rier(s) should be entitled to use the authority at issue.	

NOTICE OF ACTION TAKEN

December 19, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible. Application of Gemini Air Cargo, LLC filed 11/27/96 in Docket OST-96-1993 for: **XX** Exemption under 49 U.S.C. 40109 to provide the following service: Scheduled foreign air transportation of property and mail between New York, NY; Columbus, OH; Chicago, IL; and San Francisco and Los Angeles, CA; on the one hand, and Taipei, Taiwan, on the other. Gemini also seeks to integrate this authority with its U.S.-Hong Kong exemption authority. Applicant rep.: Moffett B. Roller, 202-822-9070 DOT analyst: Sylvia Moore, 202-366-6519 **DISPOSITION** XX Granted The above action was effective when taken: <u>December 17, 1996</u>, through <u>December 17</u>, <u> 1997</u> **XX** *Under assigned authority (14 CFR 385) by:* Paul L. Gretch, Director Office of International Aviation (Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.)

<u>XX</u> Authority granted is consistent with the aviation agreement between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States (TECRO).

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

 \underline{XX} Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award on the route integration authority requested should be construed as conferring upon Gemini additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Gemini notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedure to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in Gemini's authority by virtue of the route integration exemption granted here, but that are not then

being used by Gemini, the holding of such authority by route integration will not be considered as providing any preference for Gemini in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

NOTICE OF ACTION TAKEN

December 13, 1996

_This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible. Application of Horizon Air Industries, Inc. d/b/a Horizon Air filed 1/6/95 in Docket OST-96-**1414 (49361)** for: **XX** Waiver 14 CFR 377.10(c) **XX** Renew exemption under 49 U.S.C. 40109 to provide the following service: Scheduled foreign air transportation of persons, property, and mail between Seattle, Washington, and Vancouver, British Columbia, Canada. Applicant rep.: Stephen A. Alterman, 202-293-1030 DOT analyst: Sylvia Moore, 202-366-6519 **DISPOSITION** XX Granted The above action was effective when taken: <u>December 13, 1996</u>, through <u>December 13, 1997</u> **XX** *Under assigned authority (14 CFR 385) by:* Paul L. Gretch, Director Office of International Aviation (Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.) XX Authority granted is consistent with the aviation agreement between the United States and Canada.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and

limitations indicated:

XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

Remarks: Horizon requested a waiver from the 60-day advance filing requirements of 14 CFR 377 to ensure its authority would continue in effect beyond the expiration date (February 3, 1995), pending action on its renewal application. On February 1, 1995, we orally granted the request. We confirm that action here. Horizon's authority has remained in effect under the provisions of 5 U.S.C. 558(c) pending action on its renewal application.

NOTICE OF ACTION TAKEN

December 24, 1996

This serves as interim no Department official indicas possible.				low, taken orally by the n document will be issued o	is soon
Application of Northw	est Airlines, Inc.	filed	11/7/96	in Docket OST-96-1934	for:
XX Renew for two year service in the U.SChin		kly freque	ncies to pr	ovide scheduled combinat	ion
XX Waiver of 14 CFR	377.10(c)				
Applicant rep.: Mega	n Rae Poldy, 202-842	2-3193 D	OT analysi	: Sylvia Moore, 202-36	6-6519
	DI	SPOSITIO	N		
XX Granted (Subject to XX Dismissed Waiver R)			
The above action was effective 1998	ective when taken:l	<u>December</u>	24, 1996,	through December 2	<u>24,</u>
XX Under assigned auth	oority (14 CFR 385) b	y:	Paul L. Gretch, Director Office of International Aviation (Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.)		
XX Authority granted China.	is consistent with the	aviation a	greement	between the United States	and
Except to the extent exem limitations indicated:	pted or waived, this a	uthority is	subject to	the terms, conditions, and	
XX Holder's	certificate of public o			essity	

Conditions: Consistent with our standard practice, the frequency allocation granted is subject to the condition that it will expire automatically and the frequencies will revert back to the Department for reallocation if they are not used for a period of 90 days. Under the December 23, 1995 Memorandum of Understanding between the United States and China, Northwest may not utilize two of its frequencies until January 1, 1998. The 90-day dormancy period for these two frequencies will begin January 1, 1998.

We dismissed Northwest's request for waiver of the 60-day advance filing requirements since we acted on the carrier's renewal application before expiration of the existing authority (December 31, 1996).

NOTICE OF ACTION TAKEN

December 13, 1996

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This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of **Tower Air, Inc.** filed **December 3, 1996** in Docket **Undocketed** for:

XX Emergency request for allocation of one U.S.-Brazil combination service frequency in order to operate three weekly flights between Miami and Sao Paulo beginning December 17, 1996. (Tower already holds two frequencies under a separately awarded *pendente lite* exemption.) Tower states that it is willing to limit the term of this authorization to the expiry date of its current exemption authority, *i.e.*, March 30, 1997.

Applicant rep: Stephen L. Gelband (202) 337-6200 DOT Analyst: Linda Senese (202) 366-2367

DISPOSITION

XX Granted

The above action was effective when taken: **December 13, 1996,** through **March 30, 1997**

XX Under assigned authority (14 CFR 385) by: Paul L. Gretch, Director

Office of International Aviation

(Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness

of this action.)

XX Authority granted is consistent with the U.S.-Brazil Air Services Agreement

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

 \underline{XX} Holder's certificate of public convenience and necessity

XX Standard exemption conditions (attached)

Special Conditions/Remarks: Tower Air had polled all parties to its service list. American Airlines, Inc. and Continental Air Lines, Inc. had notified Tower that they had no objection to its short-term request. United Air Lines also filed comments stating that it did not object. Delta Air Lines filed comments stating that it did not object to the allocation through March 30, 1997, provided that the Department also granted its petition to place Tower's *pendente lite* designation to serve Brazil at issue in a selection proceeding concerning service in the U.S.-Brazil market. Tower opposed Delta's conditional approval. The issue of the third designation was addressed in the Department's order

instituting the *1997 U.S.-Brazil Combination Service Proceeding*, Docket OST-96-2016, in which the Department placed into consideration selection of carriers to serve Brazil under both the third designation (currently held by Tower) and the fourth designation for combination air services, Order 96-12-9 at 4.

NOTICE OF ACTION TAKEN

This serves as interim notice to the public of the action described below, taken orally by the

Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of United Air Lines, Inc. filed 10/29/96 in Docket OST-96-1915 (49760) for:

 \overline{XX} Renew for two years allocation of 14 weekly frequencies to provide scheduled combination service in the U.S.-China market.

Applicant rep.: Joel Burton, 202-637-9130 DOT analyst: Sylvia Moore, 202-366-6519

DISPOSITION

XX Granted (Subject to conditions, see below)

The above action was effective when taken: <u>December 24, 1996,</u> through <u>December 24, 1998</u>

XX Under assigned authority (14 CFR 385) by: Paul L. Gretch, Director

Office of International Aviation (Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.)

December 24, 1996

 \underline{XX} Authority granted is consistent with the aviation agreement between the United States and China.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

Conditions: Consistent with our standard practice, the frequency allocation granted is subject to the condition that it will expire automatically and the frequencies will revert back to the Department for reallocation if they are not used for a period of 90 days.